IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3575 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHUBEN. W/O JAGU SAKARIYA (INDREKAR CHHARA) - Petitioner(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MR VIREN G DAVE for Petitioner(s) : 1,
MR AY KOGJE, APP for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/05/2007

ORAL JUDGMENT

In this petition, the petitioner has challenged the order of detention dated 28.11.2006 passed by the Commissioner of Police, Ahmedabad City in exercise of

powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter to be referred to as “PASA”).

2. The detaining authority was of the opinion that in order to prevent the petitioner from indulging in activities prejudicial to public order, it is necessary to place her under preventive detention. In order to form such an opinion, the detaining authority took into consideration 6 cases of breach of prohibition law registered against the petitioner. On the basis of the said cases as well as the statements recorded by the Investigating agency, the detaining authority formed an opinion that the activities of the petitioner are prejudicial to the public order.

3. Learned advocate Shri Viren Dave for the petitioner submitted that the opinion formed by the detaining authority is not valid. He submitted that at best the petitioner can be categorized as a “boot-legger”, her activities, however, cannot be termed as one would cause prejudice to public order. In support of his contention, he placed reliance on a decision of the Apex Court in the case of **Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City**, Judgements Today 1988 (4) S.C. 703. In the said decision, the Apex Court was pleased to observe that it is true some incidents of beating by the petitioner had taken place as alleged by the witnesses. Such incidents, however, do not have any

bearing on the maintenance of public order. It was further observed that it may be that the petitioner may be a bootlegger, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the PASA.

4. On the other hand, learned AGP Shri Kogje has opposed the petition.

5. Having heard the learned advocates appearing for the parties, I find considerable force in the submission of the learned advocate for the petitioner. Admittedly, there is no further material on record except for involvement of the petitioner in certain offences of breach of prohibition law. It may be that the petitioner is a bootlegger and that her activities may be a question of breach of law and order. However, on the basis of the available material on record, it was not open for the detaining authority to form an opinion that the activities of the petitioner are prejudicial to public order or that her detention is therefore necessary.

6. In the result, the petition is allowed. The order of detention dated 28.11.2006 passed by the Commissioner of Police, Ahmedabad City is quashed and set aside. Since the order of detention is quashed, the detenu is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly.

Direct service is permitted.

[AKIL KURESHI, J.]

(vjn)